

## Message Text

UNCLASSIFIED

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21

ACTION L-03

INFO OCT-01 EA-09 ISO-00 SCA-01 SCSE-00 EB-07 COME-00

TRSE-00 VOE-00 /021 W

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R 130506Z AUG 75

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 2418

UNCLAS TOKYO 11177

FOR L/SCA

E.O. 11652:N/A

TAGS: CGEN, CVIS, JA

SUBJECT: GOJ INTERPRETATION OF FCN TREATY

REF: TOKYO 3989, 28 MAR 75

1. AS INDICATED IN REFTEL GOJ FINALLY AUTHORIZED COMMERCIAL VISAS IN TWO CASES IN QUESTION ON STRICTLY AD HOC BASIS CONTENDING AMERICANS INVOLVED WERE NOT ENTITLED TO TREATY BENEFITS. MFA STATES THAT ITS LEGAL ADVISERS HAVENOT COMPLETED STUDY BUT AREPRESENTLY OF VIEW THAT UNDER THE WORDING OF THE SECOND SETENCE OF PARAGRAPH THREE OF ARTICLE XXII OF THE TREATY A COMPANY INCORPORATED IN JAPAN, OR AN INDIVIDUAL DOING BUSINESS AS SINGLE PROPRIETOR, EVEN THOUGH WHOLLY AMERICAN OWNED, IS NEVERTHELESS A JAPANESE COMPANY AND EXCLUDED FROM TREATY BENEFITS. THE SENTENCE IN QUESTION READS: QUOTE COMPANIES CONSTITUTED UNDER THE APPLICABLE LAWS AND REGULATIONS WITHIN THE TERRITORIES OF EITHER PARTY SHALL BE DEEMED COMPANIES THEREOF AND SHALL HAVE THEIR JURIDICAL STATUS RECOGNIZED WITHIN THE TERRITORIES OF THE OTHER PARTY. UNQUOTE.

2. EMB HAS ARGUED THAT GOJ INTERPRETATION CONFLICTS WITH THE GENERAL AIM OF THE TREATY WHICH IS TO PROMOTE TRADE AND INVESTMENTS BETWEEN OUR COUNTRIES. EMB HAS FURNISHED COMPLETE INFO TO MFA AS TO VIEW OF U.S. THAT UNCLASSIFIED

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NATIONALITY OF A MAJORITY OF THE STOCKHOLDERS CONSTITUTES

THE NATIONALITY OF THE COMPANY. IT HAS ALSO POINTED OUT THAT NATIONALS OF A THIRD COUNTRY COULD NOT OBTAIN TREATY BENEFITS SIMPLY BY INCORPORATING IN JAPAN.

3. ACTION REQUESTED: IN ORDER THAT EMB MAY PURSUE THIS QUESTION FURTHER IN AN EFFORT TO OBTAIN MORE RECIPROCAL TREATMENT FOR AMERICANS DOING BUSINESS IN JAPAN, WITHOUT RELYING ON AD HOC DECISIONS, WHICH ARE TIME CONSUMING AND DIFFICULT TO OBTAIN, IT WILL BE APPRECIATED IF DEPT WILL FURNISH INFO AS TO WHETHER ANY OTHER COUNTRIES WITH WHOM WE HAVE FCN TREATIES ADHERE TO INTERPRETATION GIVEN BY JAPANESE. VIEWS OF MAJOR TRADING COUNTRIES SUCH AS FRANCE, GERMANY, ITALY, UNITED KINGDOM, NORWAY AND DENMARK WOULD BE MORE PERSUASIVE THAN SMALLER COUNTRIES. ANY OTHER IDEAS DEPT MIGHT HAVE ON THIS SUBJECT WOULD ALSO BE WELCOME. SHOESMITH

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**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
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**Copy:** SINGLE  
**Draft Date:** 13 AUG 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
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**TAGS:** CGEN, CVIS, JA  
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